

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ENTOURAGE INVESTMENT GROUP,)
 LLC,)
)
 Plaintiff,)
 vs.)
)
 TV4 ENTERTAINMENT, INC., *et al.*,)
)
 Defendants.)

Case No.: 2:22-cv-00637-GMN-NJK

ORDER

Pending before the Court is Defendant Brian Brady’s (“Brady’s”) Motion to Dismiss, (ECF No. 29). Plaintiff Entourage Investment Group, LLC (“Plaintiff”) filed a Response, (ECF No. 34), to which Brady filed a Reply, (ECF No. 37).

For the reasons discussed below, the Court **GRANTS** Brady’s Motion to Dismiss.

I. BACKGROUND

This action arises from Plaintiff’s investment in Defendant TV4 Entertainment, Inc. (“TV4”). (*See generally* First Am. Compl. (“FAC”)). TV4 issued convertible promissory notes to four noteholders in an amount totaling \$1,500,000. (*Id.* ¶ 20). Plaintiff purchased \$250,000 worth of the notes for TV4’s general corporate and working capital purposes. (*Id.* ¶¶ 16–17). Plaintiff’s agreement to purchase the note stated that “the entire outstanding principal balance and all unpaid accrued interest shall become fully due and payable on or after [June 27, 2018] (the ‘Maturity Date’) upon the written demand by a Majority in Interest.” (*Id.* ¶ 18). The agreement further defined a Majority in Interest as “holders of a majority of the aggregate principal amount of the Notes then outstanding.” (*Id.* ¶ 19).

Defendant Brady is an officer of TV4. (FAC ¶ 40). Brady allegedly purchased \$950,000 worth of the convertible promissory notes. (*Id.* ¶20). Thus, according to Plaintiff, Brady

constituted a Majority in Interest of the four total noteholders. (*Id.*). Plaintiff alleges that “Brady’s position as both a TV4 officer and as a Majority in Interest noteholder placed him in a unique position of trust,” imposing on Brady fiduciary duties. (*Id.* ¶ 121). Plaintiff further alleges that Brady breached his fiduciary duties “by failing to act in the best interests of the minority noteholders and instead taking action in his own self-serving interest.” (*Id.* ¶ 122). Brady now moves to dismiss the claim against him for lack of personal jurisdiction.¹

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(2) permits a defendant, by way of motion, to assert the defense that a court lacks personal jurisdiction over a defendant. Fed. R. Civ. P. 12(b)(2). When a 12(b)(2) motion is based on written materials, rather than an evidentiary hearing, a “plaintiff need only establish a prima facie showing of jurisdictional facts to withstand [a] motion to dismiss.” *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). In determining whether personal jurisdiction exists, courts take the uncontroverted allegations in a complaint as true. *Dole Food Co. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002).

When no federal statute applies to the determination of personal jurisdiction, the law of the state in which the district court sits applies. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). Because Nevada’s long-arm statute reaches the outer limits of federal constitutional due process, courts in Nevada need only assess constitutional principles of due process when determining personal jurisdiction. *See* NRS § 14.065; *Galatz v. Eighth Judicial Dist. Court*, 683 P.2d 26, 28 (Nev. 1984).

Due process requires that a non-resident defendant have minimum contacts with the forum state such that the “maintenance of the suit does not offend ‘traditional notions of fair

¹ Plaintiff incorrectly asserts that its FAC alleges three causes of action against Brady: Conversion, Accounting, and Breach of Fiduciary Duty. (Resp. 6:14–16, ECF No. 34). A careful examination of the FAC reveals that the singular claim alleged against Brady is the Eleventh Claim for Breach of Fiduciary Duty. (*See generally* FAC). Although Plaintiff brings the Seventh and Ninth claims against “Defendants,” the FAC defines “Defendants” as including TV4, Digital Health Networks Corp., and Jon Cody only. (*See id.* 1:21–25).

play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). Minimum contacts may give rise to either general jurisdiction or specific jurisdiction. *LSI Indus., Inc. v. Hubbell Lighting, Inc.*, 232 F.3d 1369, 1375 (Fed. Cir. 2000). General jurisdiction exists where a defendant maintains “continuous and systematic” ties with the forum state, even if those ties are unrelated to the cause of action. *Id.* (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414–16 (1984)). Specific jurisdiction exists where claims “arise[] out of” or “relate[] to” the contacts with the forum, even if those contacts are “isolated and sporadic.” *Id.*

III. DISCUSSION

Brady moves to dismiss the claim against him for lack of personal jurisdiction. (Mot. Dismiss, ECF No. 29). Plaintiff argues that the Court may exercise specific jurisdiction over Brady.² (Resp. 5:1–7:25, ECF No. 34). Alternatively, Plaintiff requests that the Court stay Brady’s Motion to permit limited jurisdictional discovery. (*Id.* 8:1–16).

A. Specific Jurisdiction

Specific personal jurisdiction refers to “jurisdiction based on the relationship between the defendant’s forum contacts and the plaintiff’s claims.” *Menken v. Emm*, 503 F.3d 1050, 1057 (9th Cir. 2007). Personal jurisdiction must arise out of “contacts that the ‘defendant *himself*’ creates with the forum State” and cannot be established from the conduct of a plaintiff or third parties within the forum. *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)). In other words, “the plaintiff cannot be the only link between the defendant and the forum.” *Id.* at 285.

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² Because Plaintiff does not argue for general jurisdiction over Brady, the Court’s analysis is limited to specific jurisdiction.

1 Courts employ a three-prong test to analyze whether the assertion of specific personal
2 jurisdiction in a given forum is proper:

3 (1) The non-resident defendant must [a] purposefully direct his activities or
4 consummate some transaction with the forum or resident thereof; or [b] perform
5 some act by which he purposefully avails himself of the privilege of conducting
6 activities in the forum, thereby invoking the benefits and protection of its laws;

7 (2) the claim must be one which arises out of or relates to the defendant's forum
8 related activities; and

9 (3) the exercise of jurisdiction must comport with fair play and substantial justice,
10 i.e. it must be reasonable.

11 *Schwarzenegger*, 374 F.3d at 802.

12 “The plaintiff bears the burden of satisfying the first two prongs of the test.” *Menken*,
13 503 F.3d at 1057. If the plaintiff satisfies the first two prongs, the burden will shift to the
14 defendant to show that exercising jurisdiction would be unreasonable. *Id.* However, “[i]f the
15 plaintiff fails to satisfy either of these prongs, personal jurisdiction is not established in the
16 forum state.” *Id.*

17 The Ninth Circuit has emphasized that under the first prong of the specific personal
18 jurisdiction test, purposeful availment and purposeful direction are two distinct concepts. “The
19 exact form of our jurisdictional inquiry depends on the nature of the claim at issue.” *Picot v.*
20 *Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015). For claims sounding in contract, courts generally
21 apply the “purposeful availment” analysis, which considers whether a defendant “‘purposefully
22 avails itself of the privilege of conducting activities’ or ‘consummates a transaction’ in the
23 forum, focusing on activities such as delivering goods or executing a contract.” *Menken*, 503
24 F.3d at 1057 (quoting *Schwarzenegger*, 374 F.3d at 802).

25 “‘For claims sounding in tort’ where the alleged conduct took place outside the forum
state,” courts in the Ninth Circuit apply a “purposeful direction test.” *Strayer v. Idaho State*
Patrol, No. 21-cv-35247, 2022 WL 685422, at *2 (9th Cir. Mar. 8, 2022). This test analyzes

1 whether the defendant “(1) committed an intentional act, (2) expressly aimed at the forum state,
2 (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Yahoo!*
3 *Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1206 (citing
4 *Schwarzenegger*, 374 F.3d at 803). This three-part purposeful direction test is sometimes
5 referred to as the *Calder* effects test. *See Schwarzenegger*, 374 F.3d at 806.

6 Plaintiff’s claim against Brady for breach of fiduciary duty sounds in tort. *See*
7 Restatement (3d) of Torts § 16 (2022). Additionally, Plaintiff’s unpled allegations of fraud also
8 sound in tort. *See id.* § 9. Accordingly, the Court considers whether Brady “purposefully
9 directed” his activities toward Nevada under the *Calder* effects test.

10 Plaintiff fails to establish that Brady purposefully directed his activities toward Nevada.
11 Plaintiff alleges only one contact between Brady and the forum state: Brady joined a scheme to
12 defraud Plaintiff, which happens to be a Nevada company. (Resp. 6:1–10). But even under the
13 *Calder* effects test, “the plaintiff cannot be the only link between the defendant and the forum.”
14 *Walden*, 571 U.S. at 285. “*Calder* made clear that mere injury to a forum resident is not a
15 sufficient connection to the forum.” *Id.* at 290. Thus, that a company located in Nevada may
16 have been harmed by Brady’s alleged actions does not, on its own, suggest that Brady should
17 reasonably anticipate being haled into court in this state. *See Int’l Shoe Co.*, 326 U.S. at 316.
18 Plaintiff fails to explain how the alleged actions that resulted in harm to a forum resident were
19 purposefully directed at the forum state. Moreover, even if Plaintiff could establish that Brady
20 purposefully directed his actions toward the forum state, the Court is not convinced that
21 Plaintiff’s claim for breach of fiduciary duty could “arise out of” Brady’s alleged actions
22 relating to an unpled claim for fraud. Accordingly, the Court cannot assert personal jurisdiction
23 over Brady.

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1 **B. Jurisdictional Discovery**

2 The decision whether to grant jurisdictional discovery is typically within the discretion
 3 of the district court. *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 430 n.24 (9th
 4 Cir. 1977). “[W]here pertinent facts bearing on the question of jurisdiction are in dispute,
 5 discovery should be allowed.” *Am. West Airlines, Inc. v. GPA Group, Ltd.*, 877 F.2d 793, 801
 6 (9th Cir. 1989). But “[w]here a plaintiff’s claim of personal jurisdiction appears to be both
 7 attenuated and based on bare allegations in the face of specific denials made by the defendants,
 8 the Court need not permit even limited discovery.” *Pebble Beach Co. v. Caddy*, 453 F.3d 1151,
 9 1160 (9th Cir. 2006) (quoting *Terracom v. Valley Nat. Bank*, 49 F.3d 555, 562 (9th Cir. 1995)).

10 Here, Plaintiff hinges its request for jurisdictional discovery on Brady’s potential
 11 involvement in a scheme to defraud Plaintiff. (Resp. 8:13–16). But Plaintiff has not alleged
 12 any claim for fraud against Brady. (*See generally* FAC). Plaintiff does not explain how its
 13 claim for breach of fiduciary duty could “arise under” any “minimum contacts” revealed
 14 through jurisdictional discovery regarding an unpled claim. Indeed, it appears that Plaintiff
 15 seeks to use discovery to explore this unpled claim rather than uncover jurisdictional facts
 16 related to Brady’s alleged breach of fiduciary duty. (*See* Resp. 6:17–19) (noting that “Plaintiff
 17 anticipates amending the Complaint to add fraud claims against [Brady]”). Because “civil
 18 discovery is not intended to develop other claims,” *Vera v. O’Keefe*, No. 10:cv-1422-L-MDD,
 19 2012 WL 896175, at *5 (S.D. Cal. Mar. 15, 2012), the Court declines to permit jurisdictional
 20 discovery of facts underlying Brady’s alleged, yet unpled, fraudulent actions.

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IV. CONCLUSION

IT IS HEREBY ORDERED that Brady's Motion to Dismiss, (ECF No. 29), is **GRANTED**.

DATED this 15 day of February, 2023.

Gloria M. Navarro, District Judge
UNITED STATES DISTRICT COURT